

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re N.H., a Person Coming Under  
the Juvenile Court Law.

B288746

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. 17CCJP01665A)

Plaintiff and Respondent,

v.

M.K.,

Defendant and Appellant.

APPEAL from findings and orders of the Superior Court of  
Los Angeles County. Frank J. Menetrez, Judge. Affirmed.

Anne E. Fragasso, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, and Tracey M. Blount, Deputy County  
Counsel, for Plaintiff and Respondent.

---

The juvenile court asserted jurisdiction over N.H. after finding her parents had a violent altercation in her presence. The court ordered N.H. removed from her father, M.K. (Father), and placed with her mother, S.P. (Mother). On appeal, Father contends the court's jurisdictional findings and removal order are not supported by substantial evidence. He also contends the court should have ordered that services be provided to him without declaring N.H. a dependent of the court. We disagree and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On August 11, 2017, the Los Angeles County Department of Children and Family Services (DCFS) received a report that Mother was verbally abusive to N.H., who at the time was two months old. According to the reporter, Mother yelled at N.H., "shut the fuck up before I put you back to sleep," "you know when I am mad," "be quiet," "I can't stand you," and "they don't know what a mess you are." Mother told the reporter she had been living in a homeless shelter and was having a "bad day."

During the ensuing investigation, Mother informed DCFS she had been diagnosed with bipolar disorder, major depression, and post traumatic stress disorder. Mother had been in therapy for the past eight years and was prescribed various medications as a child to treat her mental health issues. Mother, however, no longer took the medications because they made her feel like a "zombie." Mother admitted using marijuana daily to calm her down and deal with her anger.

Mother reported that since the end of her relationship with Father, he would verbally threaten her and call her derogatory names via text messages. According to Mother, in late November 2017, Father pushed and kicked her while N.H. was present.

Mother protected herself by hitting Father and kicking his television. Mother said this was the first incident of domestic violence between them, and she did not want Father to have any further contact with N.H. Father continued to send Mother “derogatory text messages” after the incident.

The program manager at the shelter where Mother was residing told DCFS that Mother is sometimes misunderstood because she has an aggressive approach and can be “rough around the edges.” The manager explained that Mother has “been through a lot, has a mouth, but she loves [N.H.]” The manager had no concerns for N.H. in Mother’s care, and denied ever seeing Mother act in a way that was dangerous or harmful to N.H.

Mother’s therapist told DCFS that she was participating in weekly therapy sessions to address aggression and anger issues. The therapist reported that living in a shelter was difficult for Mother. Nonetheless, the therapist felt Mother was providing appropriate care for N.H. The therapist had no concerns about abuse or neglect, and described Mother as extremely affectionate towards N.H.

The therapist was aware that Mother uses marijuana, but did not believe Mother had been under the influence of the drug during any of their sessions. The therapist also did not believe Mother needs medication to treat her mental illness, and reported that the therapy sessions had positively assisted Mother with her aggression.

Father denied to DCFS that he ever struck Mother or had a physical altercation with her. Father reported seeing N.H. around five times per month, with the most recent visit being on

December 24, 2017. He believed Mother had since moved out of the area to make it more difficult for him to see N.H.

On December 29, 2017, DCFS filed a first amended petition asserting N.H. is a person described by Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).<sup>1</sup> The petition alleged that in November 2017, N.H. was exposed to a violent altercation between Mother and Father, which endangered her physical and emotional health and safety and placed her at risk of physical and emotional harm, damage, and danger (counts a-1, b-3). DCFS further alleged that Mother has a history of mental and emotional problems, and is a frequent user of marijuana, which also endangered N.H.'s physical and emotional health and safety and placed her at risk of physical and emotional harm, damage, and danger (counts b-1, b-2).

On January 11, 2018, Mother filed a request for a restraining order against Father. Mother alleged that on December 24, 2017, Father brandished a knife and told her "I'ma make you bleed, I want you dead." Mother further alleged that Father previously pushed her and threatened to beat her up. The court granted Mother's request for a temporary restraining order and issued an order to show cause regarding a permanent restraining order.

The court held a joint jurisdiction/disposition hearing on March 9, 2018. Father's counsel requested that the court find him to be a non-offending parent.<sup>2</sup> Counsel argued that there had been no domestic violence between Father and Mother, and

---

<sup>1</sup> All future undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> At the hearing, the court found Father to be the presumed father of N.H.

even if there had been, the evidence showed only a single isolated incident that posed no ongoing risk to N.H. Counsel cited *In re Daisy H.* (2011) 192 Cal.App.4th 713, in support of the argument that an isolated incident of domestic violence is insufficient to support jurisdiction if the child is unharmed.

The court dismissed the counts related to Mother's mental health and substance abuse (counts b-1, b-2). It sustained the domestic violence count under section 300, subdivision (b) (count b-3), but dismissed the domestic violence count under subdivision (a) (count a-1). The court found there was unresolved acrimony between Mother and Father, which led to an incident of physical violence in N.H.'s presence. The court further found there was an ongoing risk of harm to N.H. given her age and the fact that the parents would likely have continuing contact with one another in order to care for N.H.

At the disposition phase of the hearing, Father requested the court exercise its authority under section 360, subdivision (b), and order services be provided to the parents without adjudicating N.H. a dependent child. Counsel pointed out that Father recently enrolled in parenting classes and individual therapy, which showed he is willing to become a better parent to N.H.

The court denied Father's request and declared N.H. a dependent of the court. The court ordered N.H. removed from Father and placed with Mother. It found continuance in Father's home would be contrary to N.H.'s welfare, and there would be a substantial danger to her physical health, safety, protection, or physical or emotional well-being if returned to Father. The court noted these findings were based on the facts found true in the sustained petition. The court granted Father monitored

visitation and ordered he participate in parenting and individual counseling focused on case issues, including domestic violence.

After making its dispositional orders, the court considered Mother's request for a permanent restraining order. Father argued a protective order was not necessary and urged the court to instead issue a stay-away order. The court agreed, denied Mother's request for a permanent restraining order, and ordered Father stay at least 100 yards from Mother's residence.

Father timely appealed.

## **DISCUSSION**

### **I. The Court's Jurisdictional Findings Are Supported By Substantial Evidence**

Father contends the evidence is insufficient to support the juvenile court's jurisdictional findings. We disagree.

“ ‘In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings . . . of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.’ ” (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

Under section 300, subdivision (b)(1), the juvenile court may exercise jurisdiction over a child when the child “has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness” as a result of the failure of his or her parent to “adequately supervise or protect the child.” (§ 300, subd. (b)(1).) “Exposure to domestic violence may serve as the basis of a jurisdictional finding under section 300, subdivision

(b).” (*In re R.C.* (2012) 210 Cal.App.4th 930, 941; accord, *In re Daisy H.*, *supra*, 192 Cal.App.4th at p. 717.)

“The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.” (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) “In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident. The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025–1026.)

Here, substantial evidence supports the juvenile court’s jurisdictional findings. Mother reported that, while N.H. was present, Father pushed and kicked Mother, and Mother responded by hitting Father. Although N.H. was not harmed during the incident, the court could reasonably find there was a serious risk to her safety given her tender age and inability to protect herself. (See *In re R.C.*, *supra*, 210 Cal.App.4th at pp. 941–942.)

There is also evidence showing the domestic violence arose out of an unresolved conflict between Mother and Father and is

likely to recur. Mother reported that Father had been verbally threatening her and calling her derogatory names since they separated. Father continued to send Mother derogatory text messages after the domestic violence incident, and Mother eventually requested a restraining order against him.<sup>3</sup> There was also no indication that Father had addressed the issues that led to the altercation with Mother. Father, in fact, denied that the incident of domestic violence even occurred. Moreover, although Father voluntarily enrolled in parenting classes and individual therapy, there was no evidence that either was focused on addressing Father's issues with domestic violence. Even if they were, at the time of the jurisdiction hearing, Father had attended only a handful of sessions and there was no evidence that he had made significant progress. Based on this evidence, the juvenile court could have reasonably concluded that Mother and Father's unresolved conflict posed a serious and ongoing risk of physical harm to N.H.

Father's reliance on *In re Daisy H.*, *supra*, 192 Cal.App.4th 713, is misplaced. In that case, the Court of Appeal reversed a finding that the children were persons described by section 300, subdivisions (a) and (b), where the evidence showed a single episode of domestic violence between the parents that occurred "probably seven[] years" before DCFS filed the section 300 petition, the parents had since separated, and none of the children were physically exposed to the violence. (*In re Daisy H.*, *supra*, at p. 717.) Here, in contrast, the incident of domestic

---

<sup>3</sup> Mother recounted in her request for a protective order a separate incident in which Father threatened her with a knife. The parties, however, did not present evidence related to that incident at the jurisdiction hearing.



violence was recent, N.H. was physically exposed to the violence, and there was no evidence that Mother and Father had resolved the issues that led to the incident. Accordingly, the continuing risk to N.H. was much greater than the risk to the children in *In re Daisy H.*

We also find no merit to Father's contention that there was no ongoing risk to N.H. because he had no physical contact with Mother after DCFS filed the first amended petition. The evidence showed that Father had regular contact with Mother and N.H. through late December 2017. Although there is no evidence that Father had physical contact with Mother beyond that date, Father indicated to DCFS that the lack of contact was not by choice. There was also no indication that Father would continue to avoid physical contact with Mother in the future. Accordingly, the court could have reasonably found the brief period in which Father did not make physical contact with Mother was not sufficient to alleviate the risk to N.H.

Finally, we reject Father's contention that he posed no risk of harm to N.H. because he cared for her and was protective of her. In making this argument, Father misconstrues the applicable standard of review. When reviewing the court's jurisdictional findings for substantial evidence, "we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary finding." (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.) The fact that Father may have cared for and protected N.H. does not negate the substantial evidence, recounted above, supporting the juvenile court's jurisdictional findings.

## II. The Court's Removal Order is Supported By Substantial Evidence

Father contends there is insufficient evidence to support the court's order removing N.H. from his custody. We disagree.

"Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); [Citation].)" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*)).<sup>4</sup> "[W]e review the record in the light most favorable to the dependency court's order to determine whether it contains sufficient evidence from which a reasonable trier of fact could make the necessary findings by clear and convincing evidence." (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 441.) "The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this

---

<sup>4</sup> Section 361, subdivision (c)(1), states in relevant part: "A dependent child shall not be taken from the physical custody of [the] parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds by clear and convincing evidence . . . . [¶] There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody."

regard, the court may consider the parent's past conduct as well as present circumstances." (*Cole C.*, *supra*, at p. 917.)

Here, there is sufficient evidence supporting the juvenile court's determination that N.H. would be at substantial risk of harm if "returned" to Father's custody. As discussed above, the evidence showed Father instigated a conflict with Mother that culminated in a physical altercation in N.H.'s presence. As of the disposition hearing, there was no indication that Father had sufficiently addressed the issues that led to this violent incident. The juvenile court could have reasonably concluded that allowing the parents to have a shared or joint custody arrangement would have created additional opportunities for Father to generate further conflict with Mother, which posed a substantial and continuing risk of serious harm to N.H.

Father contends the removal order was improper in light of the court's placement of N.H. in Mother's care. Specifically, he insists that he and Mother should have been treated equally since the removal order was premised on the jurisdictional findings, which showed he and Mother both engaged in domestic violence in N.H.'s presence. Father, however, overlooks significant evidence showing placement in his home would pose a greater danger to N.H. than placement in Mother's home. He ignores, for example, evidence that he was the primary instigator of the violent altercation that gave rise to the court's jurisdiction. Although Mother admitted striking Father during the incident, she explained that she did so to protect herself after Father struck her. Moreover, unlike Father, Mother acknowledged the domestic violence incident occurred. There was also evidence that, in addition to the physical altercation, Father verbally threatened Mother and called her derogatory names. There was

no evidence that Mother engaged in similar behavior. In addition, Mother had been N.H.'s primary caregiver since her birth, and multiple service providers who had frequent contact with Mother expressed no concerns for N.H.'s safety in her care. In contrast, there was no evidence that Father had ever acted as the primary caretaker for N.H. This evidence provided a reasonable basis for the court to treat Mother and Father differently in its dispositional orders.

Finally, we decline to consider Father's perfunctory argument that the removal order was improper because a mutual stay-away order would have been sufficient to prevent future harm to N.H. Father failed to make this argument below, which has forfeited the issue on appeal.<sup>5</sup> (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293 ["a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court"].)

### **III. The Court Did Not Abuse its Discretion Under Section 360, Subdivision (b)**

Father contends the juvenile court should have exercised its discretion under section 360, subdivision (b), and ordered services be provided to the parents without declaring N.H. a dependent of the court. We find no abuse of discretion.

"Once the juvenile court finds jurisdiction under section 300, it must adjudicate the child a dependent unless the severity of the case warrants nothing more than [the] Agency's supervision of family maintenance services. Under section 360,

---

<sup>5</sup> Although Father requested the juvenile court issue a stay-away order, he did so after the court made its dispositional orders and in the context of the court's consideration of Mother's request for a permanent restraining order.

subdivision (b), if appropriate, the court may, without adjudicating the child a dependent, order that services be provided to keep the family together under the informal supervision of the child welfare agency. [Citations.] [¶] Whether to exercise this option under section 360, subdivision (b), is a discretionary call for the juvenile court to make; it may opt to do so, but it need not. ‘The court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accord with this discretion.’ [Citation.] As an appellate court, we cannot reverse the court’s dispositional order absent a clear abuse of discretion. [Citation.] A court exceeds the limits of legal discretion if its determination is arbitrary, capricious or patently absurd. The appropriate test is whether the court exceeded the bounds of reason. [Citation.]” (*In re N.M.* (2011) 197 Cal.App.4th 159, 171.)

Here, the court did not abuse its discretion. As discussed above, there is substantial evidence that the parents’ unresolved conflict resulted in a violent altercation and placed N.H. at risk of harm. The evidence also indicated that Father was the primary instigator of that conflict, yet he refused to acknowledge the incident of domestic violence and failed to address the issues that led to it. Under these circumstances, the court could have reasonably concluded it was in N.H.’s best interest to be declared a dependent of the court. The court did not act arbitrarily, capriciously, or in a patently absurd manner when it declined to exercise its authority under section 360, subdivision (b).

**DISPOSITION**

The juvenile court's jurisdictional findings and dispositional orders are affirmed.

BIGELOW, P. J.

We concur:

GRIMES, J.

WILEY, J.